

REMARKS

With entry of this amendment, claims 1-28 and 38-54 (45-54 renumbered) are pending in the application. By this Amendment, claims 29-37 (previously withdrawn from consideration in response to a Restriction Requirement) have been cancelled, without prejudice, to advance the application to allowance. Also by this Amendment claim 40 has been cancelled and claim 52 (formerly claim 51) has been amended, without prejudice and in accordance with the Examiner's suggestion to delete the allegedly objectionable term "symptoms of osteoarthritis in a wearer's knee". All of the amendments presented herein are fully supported by the disclosure, and no new matter has been added to the application. Entry of these amendments and reconsideration of the application in light of the remarks herein is respectfully requested.

Patentability Under 35 USC § 101

The Office contends that Applicant's claims reciting "symptoms of osteoarthritis in a wearer's knee" embrace non-statutory subject matter. Applicant respectfully traverses and submits that this language, as originally presented in claims 40 and 51 (currently renumbered as claim 52) is consistent with 35 USC § 101. However, in the interests of clarity and to advance the application to issuance, claim 40 has been cancelled claim 52 has been amended herein, without prejudice, to delete the allegedly objectionable term "symptoms of osteoarthritis in a wearer's knee". Accordingly, the rejection under 35 USC § 101 is respectfully submitted to be overcome.

Double Patenting

The only remaining issue of patentability presented in this application relates to alleged double patenting. In particular, the current Office Action imposes a provisional rejection of claims 1-28, and 38-54 over claims 11-28, and 38 of copending Application No. 10/187,008, in view of Taylor US Patent 5,797,864.

Applicant notes that copending Application No. 10/187,008, having common inventorship (Shane Sterling) and commonly owned (Generation II USA) with the instant

application, has now issued as US Patent No. 6,969,364. Accordingly, the instant double patenting rejection is addressed herein as non-provisional.

In view of the non-provisionality of the instant double patenting rejection, and in order to advance the current application to issuance, Applicant submits herewith a Terminal Disclaimer in the present case over issued US Patent No. 6,969,364. Applicant declines to address the merits of the double patenting rejections presented in the Office Action, and neither accedes to nor contests those rejections, noting instead that the Terminal Disclaimer renders the merits of those rejections moot. Withdrawal of the subject double patenting rejections is therefore earnestly solicited irrespective of the merits thereof.

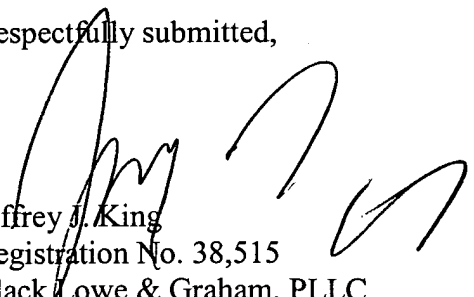
CONCLUSION

In view of the foregoing, Applicant believes that all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes that a telephone conference would expedite prosecution of this application, please telephone the undersigned at (206) 381-3300.

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Respectfully submitted,



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